

**No. 5:12-CV-00094-F**

Defendant.

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## DISCUSSION

The Court is required to dismiss all or part of an action found to be frivolous or malicious, which fails to state a claim upon which relief can be granted, or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2); *Michau v. Charleston County, S.C.*, 434 F.3d 725, 728 (4th Cir. 2006). A case is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). *Pro se* complaints are entitled to more liberal treatment than pleadings drafted by attorneys. See *White v. White*, 886 F.2d 721, 722-23 (4th Cir. 1989). After careful review of Plaintiff’s proposed complaint, and giving due consideration to his *pro se* status, the undersigned concludes that the proposed complaint fails to state a claim upon which relief may be granted.

Plaintiff brought this action against his former spouse to enforce his parental rights. He alleged in his proposed complaint that a separation agreement was executed at “US Army Ft. Bragg, North Carolina in 1998,” but has never been honored and that his former spouse will not permit him to visit or talk to his children. Compl. at 1 [DE-1]. Plaintiff believes that his former spouse resides in Richmond or Augusta, Georgia and provided her last known address in Fort Gordon, Georgia, but did not prepare a summons.

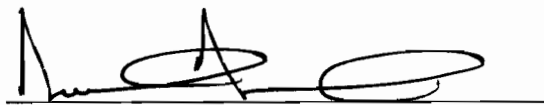
With respect to his request to enforce his parental rights, despite an allegation of diversity jurisdiction, there is a “long established precedent that federal courts are courts of limited jurisdiction and generally abstain from hearing child custody matters.” *Cantor v. Cohen*, 442 F.3d 196, 202 (4th Cir. 2006). There appears to be no federal question at issue that would justify the Court’s exercise of jurisdiction over this apparent child custody dispute. Thus, the Court lacks jurisdiction over Plaintiff’s claim to enforce his parental rights.

### CONCLUSION

It is **RECOMMENDED** that this action be **DISMISSED** for lack of jurisdiction and that the application to proceed *in forma pauperis* [DE-2] be **DENIED AS MOOT**.

The Clerk shall send a copy of this Order and Memorandum and Recommendation to the *pro se* Plaintiff, who shall have fourteen (14) days from the date of receipt to file written objections. Failure to file timely written objections shall bar an aggrieved party from receiving a de novo review by the District Court on an issue covered in the Memorandum and, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions not objected to, and accepted by, the District Court.

This the 13<sup>th</sup> day of March, 2012.

A handwritten signature in black ink, appearing to read 'David W. Daniel', is written over a horizontal line.

DAVID W. DANIEL  
United States Magistrate Judge